



City of Loma Linda Official Report

Karen Gaio Hansberger, Mayor
Floyd Petersen, Mayor pro tempore
Robert Christman, Councilmember
Stan Brauer, Councilmember
Robert Ziprick, Councilmember

COUNCIL AGENDA: August 24, 2004

TO: City Council

VIA: Dennis R. Hallaway, City Manager

SUBJECT: Ratify Mutual Release and Compromise Agreement relating to the
sanitary sewer mainline serving Tract 16259 located south of
Barton Road, west of Oakwood Drive

MUTUAL RELEASE AND COMPROMISE AGREEMENT

LOMA 2002, L.P. (hereinafter referred to as "Developer") and THE CITY OF LOMA LINDA (hereinafter referred to as "City"), in consideration of the promises made herein, agree as follows:

Nature and Effect of Agreement

1. This agreement consists of a compromise and settlement by each party of that party's claims against the other party, and a release given by each party to the other relinquishing all claims against the other. By executing this agreement, each of the parties intends to and does hereby extinguish the obligations heretofore existing between them. This agreement is not, and shall not be treated as, an admission of liability by either party for any purpose.

Nature and Status of Dispute

2. This dispute arises out of the construction by Developer of a sanitary sewer mainline serving Tract No. 16259 in the City of Loma Linda. City contends that the construction and alignment of said sewer line, between Manholes 4 and 5, do not meet the requirements of the approved plans and specifications, and that said sewer line as constructed is unacceptable under City standards. The City further contends that unless the subject sewer line is reconstructed, Developer should be responsible for the cost of additional inspections, maintenance and possible repairs on a regular basis. Developer contends that said sewer line substantially conforms to the applicable plans and specifications, and is acceptable under industry standards. Developer further disputes the need for and estimated cost of any future inspections, maintenance and repairs.

Mutual Compromise Agreement

3. Each party, in consideration of the promises and concessions made by the other, hereby compromises and settles any and all past, present or future claims, demands, obligations or causes of action, whether based on tort, contract or other theories of recovery, which that party has or which may later accrue to or be acquired by that party against the other party and the other party's predecessors and successors in interest, heirs, and assigns, arising from the subject matter of the actions described in Paragraph 2 of this agreement, on the following terms and conditions set forth herein.

(a) Developer agrees to pay to City the sum of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000.00) in full settlement of the dispute described in Paragraph 2 of this agreement. Said settlement sum shall be paid in one (1) installment, and shall be due upon execution of this agreement. The intent of said payment shall be to reasonably provide for future inspection, maintenance and repair of the portion of the sewer line identified in Paragraph 2 of this agreement.

(b) Upon payment in full of the amount described in Paragraph 3(a) above, City agrees to:

(i) Deposit said payment into a segregated account to be used for the future inspection, maintenance and repair of the subject sewer line as deemed necessary in the sole discretion of City's Public Works Director.

(ii) Promptly complete any and all remaining inspections of the subject tract in order to expedite the issuance of certificates of occupancy in a timely fashion, subject to the completion of any reasonably necessary corrective work.

(iii) Accept into the City's sewer system the subject portion of the sewer line as constructed.

(c) Developer and City agree that this compromise and settlement shall constitute a bar to all past, present and future claims arising out of the subject matter of the actions described in Paragraph 2.

Mutual General Release

4. Each of the parties on behalf of itself, its employees, officers, directors, partners, shareholders, agents, heirs, successors and assigns, hereby fully releases and discharges the other party and that party's employees, officers, directors, partners, shareholders, agents, heirs, successors and assigns from all rights, claims and actions which each party and the above-mentioned successors now have against the other party and the above-mentioned successors, stemming from their differences arising from the dispute described in Paragraph 2.

Indemnification

5. Developer hereby agrees to defend, indemnify and hold City harmless from any claims or actions brought or maintained by any other party against City seeking to set aside or invalidate this agreement on any substantive ground. Developer shall not be required to indemnify, defend or hold harmless the City from any claim to the extent it is based on any alleged procedural defect in the approval of this agreement by the City.

Unknown Claims

6. (a) Each party acknowledges and agrees that the release it gives to the other party upon executing this agreement applies to all past, present or future claims for injuries, damages or losses, real or personal (whether those injuries, damages or losses are known or unknown, foreseen or unforeseen, patent or latent) which it may have against the other party. Each party waives application of California Civil Code Section 1542.

(b) Each party certifies that they have read the following provisions of California Civil Code Section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of

executing the release, which if known by him must have materially affected his settlement with the debtor.”

Advice of Attorney

7. Each party warrants and represents that, in executing this agreement, they have had the right to seek legal advice from the attorney of their choice; that the terms of this agreement have been read; and that they fully understand the terms of this agreement. Each party further acknowledges and represents that, in executing this release, they have not relied on any inducements, promises or representations not set forth herein.

8. Each party acknowledges and warrants that their execution of this release is free and voluntary.

Execution of Other Documents

9. Each party to this agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this agreement.

Attorney's Fees

10. Each party to this agreement shall bear all attorney's fees and costs, if any, arising from that party's own counsel in connection with this matter.

Entire Agreement

11. This agreement contains the entire agreement between the parties.

Effective Date

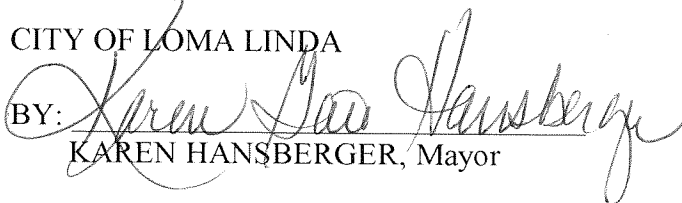
12. This agreement shall become effective immediately upon execution by all parties.

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Governing Law

13. This agreement is entered into, and shall be construed and interpreted in accordance with, the laws of the State of California.


Dated: July 14, 2004

CITY OF LOMA LINDA
BY: 
KAREN HANSBERGER, Mayor

Dated: July 14, 2004

LOMA 2002, L.P.
BY: 
DANIEL KASSEL
BY: 
B. J. DELZER

Approved as to form:


Richard E. Holdaway, City Attorney